

LEGAL REVIEW NOTE

LC#: LC0080, To Legal Review Copy, as of February 9, 2013.

Short Title: Require disclosure of financial support in certain civil suits

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Date: February 13, 2013

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

LC0080, as drafted, may raise potential constitutional issues associated with the provisions of freedom of assembly and association under Article II, section 6, of the Montana Constitution and the Fourteenth Amendment to the United States Constitution.

Sections 1 and 2 of LC0080 require a plaintiff in certain legal actions to disclose the names of individuals and organizations that provide financial assistance in the amount of \$100 or more to the party seeking the injunction or restraining order and to provide that information to the defendant in the legal action.

The United States Supreme Court has held that under the Fourteenth Amendment to the United States Constitution, the immunity from state scrutiny of membership lists of associations was so related to the right of the members to pursue their lawful private interests privately, and to associate freely with others in so doing, as to come within the protection of the Fourteenth Amendment, and that a state would have to show a controlling justification for the deterrent effect on the free enjoyment of the right to associate that disclosure of the membership lists was likely to have. *National Association for the Advancement of Colored People v. Alabama ex rel.*

Patterson, 357 U.S. 449; 78 S. Ct. 1163; 2 L. Ed. 2d 1488; 1958 U.S. LEXIS 1802.

Consequently, a potential issue is whether the state of Montana can statutorily require disclosure of the names of individuals and organizations that contribute to an individual or organization that is bringing a cause of action and whether that required disclosure conforms with the provisions of freedom of assembly and association under Article II, section 6, of the Montana Constitution and the Fourteenth Amendment to the United States Constitution.

Requester Comments: With the passage of I-166 in Montana that established a state policy that corporations are not entitled to constitutional rights because they are not human beings, the issues raised in this Legal Review Note are rebutted. Representative Harris, February 14, 2013.